

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

DAVID KENT FITCH, #73397,	§	
	§	
Petitioner,	§	
	§	
v.	§	Case No. 6:23-cv-0159-JDK-KNM
	§	
UNITED STATES OF AMERICA,	§	
	§	
Respondent.	§	

**ORDER ADOPTING THE REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

Petitioner David Kent Fitch, an inmate of the Smith County Jail proceeding pro se, filed this federal petition for writ of habeas corpus to assert claims related to the timing of his sentencing on federal charges, without paying the filing fee or moving to proceed *in forma pauperis*. The case was referred to United States Magistrate Judge K. Nicole Mitchell for findings of fact, conclusions of law, and recommendations for the disposition of the case.

On May 9, 2023, Judge Mitchell ordered Petitioner to pay the filing fee or move to proceed IFP and to file an amended petition clearly setting forth his claims within thirty days. Docket No. 3. Petitioner did not comply with that Order. On August 1, 2023, Judge Mitchell issued a Report recommending that the petition be dismissed for failure to prosecute due to Petitioner's failure to satisfy the fee requirement or comply with the Court's Orders. Docket No. 5. No timely objections were filed.


This Court reviews the findings and conclusions of the Magistrate Judge de novo only if a party objects within fourteen days of the Report and Recommendation.

28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

Here, Petitioner did not object in the prescribed period. The Court therefore reviews the Magistrate Judge’s findings for clear error or abuse of discretion and reviews her legal conclusions to determine whether they are contrary to law. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989) (holding that, if no objections to a Magistrate Judge’s Report are filed, the standard of review is “clearly erroneous, abuse of discretion and contrary to law.”).

Having reviewed the Magistrate Judge’s Report and the record in this case, the Court finds no clear error or abuse of discretion and no conclusions contrary to law. Accordingly, the Court hereby **ADOPTS** the Report and Recommendation of the United States Magistrate Judge (Docket No. 5) as the findings of this Court. Petitioner’s petition for habeas corpus is hereby **DISMISSED** without prejudice. The Court **DENIES** a certificate of appealability. All pending motions are **DENIED** as **MOOT**.

So **ORDERED** and **SIGNED** this **7th** day of **September, 2023**.

  
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JEREMY D. KERNODLE  
UNITED STATES DISTRICT JUDGE